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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,959	12/22/2000	Krishna Venkatraman	DEM1P005	7256
36088	7590	05/25/2005	EXAMINER	
KANG LIM			PATEL, JAGDISH	
3494 CAMINO TASSAJARA ROAD #436			ART UNIT	
DANVILLE, CA 94306			PAPER NUMBER	

3624

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/741,959	Applicant(s) VENKATRAMAN ET AL.	
	Examiner JAGDISH PATEL	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-4 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/3/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This communication is in response to amendment filed 3/3/2005.

Response to Amendment

2. The specification and the abstract have been amended per request.
3. Claims 1-4 have been amended and claims 5 and 6 have been cancelled.

Response to Arguments

4. Applicant's arguments with respect to 35 USC 102 rejections of claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the amended claim 1 includes "activity-based costs" and that the prior art of Ouimet "does not teach or suggest the use of activity-based costs to determine a local optimum for the preferred set of prices which maximize profit", the examiner points out that limitation recites the aforementioned limitation only in terms of intended use (to determine a preferred set of prices for the plurality of products that will provide local optimum.."). This intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the

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claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

5. Applicant's amendment is not effective to overcome 35 USC 101 and 35 USC 112 (second) rejections of claims 1-4 as explained in the following paragraphs.

35 USC 101 Rejection

6. Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. See analysis presented below.

The amended claims 1-4 recites technological art only in the preamble.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble.

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In the present case, independent claim 1 recites "computer-implemented" only in the preamble without indicating any method step as being performed by a computer. Therefore, the claimed method as a whole is rendered outside technological since all limitation are broadly interpreted as being manually performed.

Claim Rejections - 35 USC § 112

7. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 2-4 recite the limitations "the determination of the preferred set of prices". There is insufficient antecedent basis for this limitation in the claim. Independent claim does not positively recite such limitation which carries out the determination of the preferred set of prices. As noted earlier the determination is only recited as an intended result of the "using" step.

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Claim Rejections - 35 USC § 102

9. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Ouimet et al. (US 6,094,641) (Ouimet).

As per claims 1-4 Ouimet discloses a method for determining a preferred set of prices for a plurality of products based on plurality of demand coefficients and cost data (see Figures 1 and 2 and col. 3-6). Ouimet also inherently teaches generating sales model and cost model (refer to demand models, referred to in col. 4-6 and Figures 1-12).

Please note that this analysis is predicated on the foregoing analysis which demonstrates that the intended use limitations ("to determine preferred set of prices" and "that will provide a local optimum for the preferred set of prices, and wherein the local optimum for the preferred set of prices maximized profit") of the claimed invention do not result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

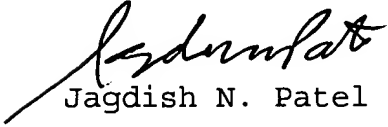
Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH

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PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571)272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

5/18/05